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NOTIFICATION

No. 5328|58|Law (B) 4.

Dated, Trivandrum, 25th September, 1958.
3rd Aswina, 1880.

The following Ordinance promulgated by the Governor on 24th September, 1958, is hereby published for general information.

By order of the Governor,
P. NARAYANASWAMI,
Additional Law Secretary.

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Kerala Gazette Extraordinary No. 100 dated 25th September 1958.

ORDINANCE No. 6 OF 1958

THE KERALA WEIGHTS AND MEASURES (ENFORCEMENT) ORDINANCE, 1958

PROMULGATED BY THE GOVERNOR OF KERALA IN THE NINTH YEAR OF THE REPUBLIC OF INDIA.

An Ordinance to provide for the enforcement of standard weights and measures and for matters connected therewith.

Preamble.—WHEREAS the Legislative Assembly of the State of Kerala is not in session and the Governor of Kerala is satisfied that circumstances exist which render it necessary for him to take immediate action;

AND WHEREAS the instructions from the President have been obtained in pursuance of the proviso to clause (1) of article 213 of the Constitution of India;

NOW THEREFORE in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, the Governor of Kerala is pleased to promulgate the following Ordinance:—

CHAPTER I

PRELIMINARY

1. *Short title, extent and commencement.*—(1) This Ordinance may be called the Kerala Weights and Measures (Enforcement) Ordinance, 1958.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force on such date as the Government may, by notification in the Gazette, appoint; and different dates may be appointed for different provisions of this Ordinance or for different areas or for different classes of undertakings or for different classes of goods.

2. *Definitions.*—In this Ordinance, unless the context otherwise requires,—

(a) "commercial weight or measure" means a weight or measure purporting to be a standard weight or measure used in any transaction for trade or commerce;

(b) "Controller" means the Controller of Weights and Measures appointed under sub-section (1) of section 15 or any other officer empowered by the Government to exercise the powers and discharge the duties conferred or imposed on the Controller by or under this Ordinance;

(c) "Inspector" means an Inspector of Weights and Measures appointed under sub-section (1) of section 15 or any other officer empowered by the Government to exercise the powers and discharge the duties conferred or imposed on an Inspector by or under this Ordinance;

(d) "measuring instrument" means any measuring instrument other than a weighing instrument and includes any instrument for measuring length, area, volume or capacity ;

(e) "mint" means the mint of the Central Government either in Bombay or in Calcutta;

(f) "prescribed" means prescribed by rules made under this Ordinance;

(g) "reference standards" means the sets of standard weights and measures supplied to the Government by the Central Government in pursuance of sub-section (2) of section 15 of the Standards of Weights and Measures Act, 1956 ;

(h) "stamping" means marking in such manner as to be, so far as practicable, indelible and includes casting, engraving, etching and branding ;

(i) "standard weight or measure" means any unit of mass or measure referred to in sub-section (1) of section 13 of the Standards of Weights and Measures Act, 1956 and includes any other weight or measure the continuance of the use of which is permitted by the Central Government under sub-section (1) of section 14 of the said Act ;

(j) "verification" with its grammatical variations, used with reference to a weight or measure or weighing or measuring instrument, includes the process of comparing, checking or testing such weight or measure or weighing or measuring instrument and also includes reverification ;

(k) "weighing instrument" means any instrument for weighing and includes scales with the weights belonging thereto, scale-beams, balances, spring balances, steel yards and other weighing machines.

CHAPTER II

STANDARD WEIGHTS AND MEASURES

3. *Working standards.*—(1) For the purpose of verifying the correctness of commercial weights and measures and weighing and measuring instruments used in transactions for trade or commerce, the Government may cause to be prepared as many sets of authenticated standard weights and measures as they may deem necessary to be called the working standards, and special sets of working standards in relation to bullion and precious stones may also be prepared.

(2) The working standards shall be made of such material and according to such designs and specifications and shall be prepared by such agency and shall be stamped and authenticated by such person or authority and in such manner as may be prescribed.

(3) The working standards shall be kept at such places, in such custody and in such manner as may be prescribed.

(4) A working standard shall be verified with the secondary standard and marked by such persons, at such places, at such intervals and in such manner as may be prescribed:

Provided that a special working standard in relation to bullion and precious stones shall be verified with the reference standard.

(5) A working standard which is not so verified and marked within the prescribed period shall not be deemed legal or be used for the purposes of this Ordinance.

(6) A working standard which has become defective shall not be deemed legal or be used for the purposes of this Ordinance until it has been verified and marked in the prescribed manner.

4. *Secondary standards.*—(1) For the purpose of verifying the correctness of the working standards, the Government may cause to be prepared at the mint as many sets of authenticated standard weights and measures as they may deem necessary to be called the secondary standards.

(2) The secondary standards shall be made of such material and according to such designs and specifications as may be prescribed and shall be stamped and authenticated by such person or authority as the Central Government may direct.

(3) The secondary standards shall be kept at such places, in such custody and in such manner as may be prescribed.

(4) A secondary standard shall be verified with the reference standard at least once in every period of five years and shall be marked with the date of verification in the prescribed manner by such person or authority as the Government may direct.

(5) A secondary standard which is not so verified and marked within the aforesaid period shall not be deemed legal or be used for the purposes of this Ordinance.

5. *Reference standards.*—The reference standards shall be kept at such places, in such custody and in such manner as the Government may direct.

6. *Standard weighing and measuring instruments.*—(1) For the purpose of verifying the correctness of commercial weights and measures and of weighing and measuring instruments used in transactions for trade or commerce, the Government may cause to be prepared as many sets of weighing and measuring instruments as they may deem necessary.

(2) Such instruments shall be of such kind, kept in such number and shall be verified and stamped in such manner as may be prescribed.

(3) Such instruments shall be kept at all places where secondary standards or working standards are kept.

7. *Prohibition of use of weights and measures other than standard weights and measures.*—(1) Notwithstanding anything contained in any other law or any custom, usage or practice, no unit of mass or measure, other than the standard weight or measure, shall be used in any transaction for trade or commerce or in any dealing or contract or for any work to be done or goods to be sold or delivered in any area or class of goods or undertakings in respect of which this Ordinance has come into force.

(2) Any custom, usage, practice or method of whatever nature which permits in any trade a trader, seller or buyer to demand, receive or cause to be demanded or received any quantity of article in excess of or less than the quantity fixed by the weight or measure by which the contract or dealing in respect of the said article has been made, shall be void.

(3) Any transaction, dealing or contract made or had after the expiry of three months from the commencement of this Ordinance shall, in so far as it contravenes the provisions of sub-section (1), be void.

8. *Power to prescribe the use of weights only, or measures only, in certain cases.*—(1) Notwithstanding anything contained in this Ordinance, the Government may, by notification in the Gazette, direct that in any specified trade or class of trades no transaction, dealing or contract shall be made or had except by weight only, or except by measure only.

(2) A notification issued under this section shall take effect in such area, with effect from such date, and subject to such conditions, if any, as may be specified therein.

Chapter III

VERIFICATION AND STAMPING OF WEIGHTS AND MEASURES

9. *Marking of denominations on commercial weights and measures.*—Every weight or measure manufactured for use as a commercial weight or measure shall bear the description of the weight or measure which it purports to be marked legibly on it in such manner as may be prescribed.

10. *Prohibition of sale of unstamped commercial weights and measures.*—No commercial weight or measure or weighing or measuring instrument shall be sold or delivered unless it has been verified or re-verified in accordance with the rules made under this Ordinance and stamped in the prescribed manner by an Inspector with a stamp of verification.

11. *Prohibition of use of unstamped commercial weights and measures.*—No weight or measure or weighing or measuring instrument shall be used in transactions for trade or commerce unless it has been verified or re-verified in accordance with the rules made under this Ordinance and stamped in the prescribed manner by an Inspector with a stamp of verification.

12. *Power of Government to exempt.*—Where the size of a commercial weight or measure renders it impracticable to have any denomination marked on it under the provisions of section 9 or to be stamped under the provisions of section 10 or section 11, the Government may, by notification in the Gazette, exempt such weight or measure from being so stamped.

13. *Prohibition of manufacture, etc., of weights and measures without licence.*—No person shall, in course of trade, manufacture, repair or sell any commercial weight or measure or any weighing or measuring instrument unless he has obtained in the prescribed manner a licence in this behalf from the Government or any officer authorised by the Government.

14. *Marking of weight or measure in sealed containers.*—No person shall sell, offer for sale, expose for sale, or have in his possession for sale, any article contained in a sealed package or container unless such package or container bears thereon, or on a label securely attached thereto, a description of the net weight or measure of the article contained therein:

Provided that the provisions of this section shall not apply to an article sold, offered for sale, exposed for sale, or in possession for sale which is not ordinarily sold in transactions for trade or commerce by weight or measure.

15. *Appointment of Controller and Inspectors.*—(1) The Government may appoint a Controller of Weights and Measures for the State of Kerala and as many Inspectors of Weights and Measures as may be necessary for exercising the powers and discharging the duties conferred or imposed on them by or under this Ordinance.

(2) The Government may, by general or special order, define the local limits within which each Inspector shall exercise the powers and discharge the duties conferred or imposed on Inspectors by or under this Ordinance.

(3) Subject to the provisions of this Ordinance, all Inspectors shall perform their functions under the general superintendence and control of the Controller; and the Controller may, in addition to the powers and duties conferred or imposed on him by or under this Ordinance, exercise any power or discharge any duty so conferred or imposed on Inspectors.

16. *Verification and stamping by Inspectors.*— (1) Every Inspector shall, for the purpose of verification of weights and measures and weighing and measuring instruments, attend at such place and time within his jurisdiction as may be appointed in this behalf by the Controller.

(2) The Inspector shall verify every weight or measure or weighing or measuring instrument which is brought to him for the purpose of verification and if he finds such weight or measure or weighing or measuring instrument correct and in conformity with the Standards of Weights and Measures Act, 1956, and the rules made thereunder, he shall stamp the same with a stamp of verification in the prescribed manner.

17. *Power to inspect, etc.*—(1) An Inspector may, within the area under his jurisdiction, inspect, at all reasonable times, the weights, measures and weighing and measuring instruments which are used in transactions for trade or commerce or are in the possession of any person or are on any premises for such use and may verify every such weight or measure or weighing or measuring instrument with a secondary or working standard or weighing or measuring instrument prescribed for the purpose.

(2) For the purpose of verifying the correctness of any weight or measure used in any transaction, an Inspector may also verify the weight or measure of any article sold or delivered in the course of the transaction.

(3) An Inspector may, at all reasonable times, require any trader or any employee or agent of a trader to produce before him for inspection all weights, measures and weighing and measuring instruments which are used by him or are in his possession or are kept on any premises used for trade or commerce and all documents and records relating thereto and such trader, employee or agent shall comply with such requirements.

(4) An Inspector may seize and detain any weight or measure or weighing or measuring instrument regarding which an offence under this Ordinance appears to have been committed or which appears to have been or which might be used in the commission of such an offence, and may also seize and detain any article sold or delivered or caused to be sold or delivered by means of such weight or measure or weighing or measuring instrument together with any documents or records relating thereto.

(5) Where an Inspector has reason to believe that a sealed package or container does not actually contain the net weight or measure of the article which it purports to contain, the Inspector may break open the sealed package or container and verify its contents; and if, on such verification, the net weight or measure of the article is found to be correct, the Inspector shall re-seal the package or container where it is possible so to do without injury to the contents thereof and attach a certificate thereto stating the correct weight or measure of the article; but if, on the other hand, the net weight or measure of the article is found to be incorrect, the Inspector may seize and detain the package or contaioer and the article contained therein.

(6) For the purpose of such inspection, an Inspector may, at all reasonable times, enter into any place where weights, measures or weighing or measuring instruments are used or

kept for use in transactions for trade or commerce and inspect such weights and measures and weighing and measuring instruments.

18. *Power of Inspector to adjust weights or measures.*—Where it appears to the Government desirable that an Inspector should be allowed, in any area, to adjust the weights or measures or weighing or measuring instruments, they may, if they think fit, authorise such Inspector to adjust the weights or measures or such instrumnents accordingly.

19. *Manufacturers, etc., to maintain records and accounts.*—

(1) Every manufacturer, repairer or dealer in weights or measures or weighing or measuring instruments and every person using them in transactions for trade or commerce shall maintain such records and accounts as may be prescribed and if required so to do by an Inspector, shall produce such records and accounts before him.

(2) Notwithstanding anything contained in sub-section (1), if the Government are of opinion that, having regard to the nature of business carried on by any such manufacturer, repairer or dealer, it is necessary so to do, they may, by order, exempt such person or class of persons from the operation of that sub-section.

20 *Appeals.*—(1) Subject to the provisions of sub-section (2), an appeal shall lie—

(a) from every decision of an Inspector under this Ordinance, to the Controller; and

(b) from every decision of the Controller under this Ordinance, not being a decision made in appeal under clause (a), to the Government or any officer specially authorised in this behalf by the Government.

(2) Every such appeal shall be preferred within sixty days from the date of the decision.

(3) On receipt of any such appeal, the appellate authority shall, after giving the appellant a reasonable opportunity of being heard and after making such enquiry as it deems proper, decide the appeal and the decision of the appellate authority shall be final.

21. *Levy of fees.*—The Government may charge such fees—

(a) for the grant of licences under Section 13, for the manufacture, repair or sale of commercial weights and measures and weighing and measuring instruments, and

(b) for the verification, marking, stamping and adjustment of commercial weights and measures and weighing and measuring instruments,

as may be prescribed.

22. *Validity of weights and measures duly stamped.*—A weight or measure or weighing or measuring instrument duly stamped by an Inspector under this Ordinance shall be a legal weight or measure or weighing or measuring instrument in all

places in which this Ordinance has come into force unless it is found to be false or defective and shall not be liable to be re-stamped by reason merely of the fact that it is used in any place other than that in which it was originally stamped.

CHAPTER IV

PENALTIES.

23. *Penalty for sale or delivery by weight or measure other than standard weight or measure.*—Whoever, after the expiry of three months from the commencement of this section, sells or causes to be sold or delivers or causes to be delivered in the course of any transaction for trade or commerce any article by any denomination of weight or measure other than one of the standard weights or measures shall be punishable, for a first offence, with fine which may extend to two thousand rupees, and, for a second or subsequent offence, with imprisonment for a period which may extend to three months, or with fine, or with both.

24. *Penalty for sale of unstamped commercial weights and measures.*—Whoever sells or delivers any commercial weight or measure or any weighing or measuring instrument which has not been verified or reverified or stamped in accordance with the provisions of this Ordinance and the rules made thereunder shall be punishable with fine which may extend to two thousand rupees.

25. *Penalty for use of unstamped commercial weights or measures.*—Whoever uses in any transaction for trade or commerce, or has in his possession for such use, any commercial weight or measure or any weighing or measuring instrument which has not been verified or reverified or stamped in accordance with the provisions of this Ordinance and the rules made thereunder shall be punishable, for a first offence, with fine which may extend to two thousand rupees, and, for a second or subsequent offence, with imprisonment for a period which may extend to three months, or with fine, or with both.

Explanation 1.—When any such weight or measure or weighing or measuring instrument is found in the possession of any trader or any employee or agent of such trader, such trader, employee or agent shall be presumed, until the contrary is proved, to have had it in his possession for use in transactions for trade or commerce.

Explanation 2.—Where any weight or measure or weighing or measuring instrument is used or possessed in contravention of this section by any employee or agent of a trader on behalf of such trader, such trader shall, unless he proves that the offence under this section was committed by his employee or agent without his knowledge or consent, be also deemed to be guilty of the offence.

26. *Penalty for manufacture of weights, etc., without licence.*—Whoever manufactures, repairs, or sells any commercial weight or measure or weighing or measuring instrument without obtaining a licence as required by section 13, shall be punishable with imprisonment for a period which may extend to three months, or with fine, or with both.

27. *Penalty for use of weight or measure in contravention of section 8.*—Whoever contravenes any of the provisions of a notification issued under section 8 shall be punishable with fine which may extend to two thousand rupees.

28. *Penalty for failure to mark weight or measure in sealed containers.*—Whoever contravenes the provisions of section 14 shall be punishable with fine which may extend to two thousand rupees.

29. *Penalty for fraudulent use of weights, measures, etc.*—Whoever fraudulently uses any standard weight or measure or weighing or measuring instrument which he knows to be false shall be punishable with imprisonment for a period which may extend to one year, or with fine, or with both.

30. *Penalty for being in possession of false weight or measure, etc.*—Whoever is in possession of any commercial weight or measure or weighing or measuring instrument which he knows to be false, intending that the same may be fraudulently used, shall be punishable with imprisonment for a period which may extend to one year, or with fine, or with both.

31. *Penalty for making or selling false weight or measure, etc.*—Whoever makes, sells or disposes of or causes to be made, sold or disposed of any standard weight or measure or weighing or measuring instrument which he knows to be false, in order that the same may be used as true, or knowing that the same is likely to be used as true, shall be punishable with imprisonment for a period which may extend to one year, or with fine, or with both.

32. *Penalty for giving short weight or measure.*—Whoever in selling any article by weight or measure delivers or causes to be delivered to the purchaser less than what is purported to be sold shall, if the deficiency exceeds the prescribed limit of error, be punishable with fine which may extend to three hundred rupees.

33. *Penalty for forging, etc., of weights, measures, etc.*—(1) Whoever forges or counterfeits any stamp used under this Ordinance for the stamping of any standard weight or measure or weighing or measuring instrument or possesses any such counterfeit stamp, or removes a stamp from any standard weight or measure or weighing or measuring instrument and inserts the same into another weight or measure or weighing or measuring instrument or wilfully increases or diminishes a weight or measure so stamped, shall be punishable with imprisonment for a period which may extend to one year, or with fine, or with both.

(2) Whoever knowingly uses, sells, disposes of or exposes for sale any weight or measure or weighing or measuring instrument, with such forged or counterfeit stamp thereon, or a weight or measure so increased or diminished, shall be punishable with imprisonment for a period which may extend to six months, or with fine, or with both.

34. *Penalty for neglect or refusal to produce weight or measure, etc., for inspection.*—Whoever,—

(a) refuses or neglects to produce for inspection under section 17 any weight or measure or weighing or measuring instrument or any document or record relating thereto in his possession or on his premises; or

(b) refuses to permit an Inspector to inspect and verify any such weight, measure, instrument, document or record; or

(c) obstructs the entry of an Inspector under section 17; or

(d) otherwise obstructs or hinders an Inspector in the performance of his duties under this Ordinance, shall be punishable with fine which may extend to five hundred rupees.

35. *Penalty for breach of duty by Inspector.*—If an Inspector knowingly stamps a weight or measure or weighing or measuring instrument in contravention of the provisions of this Ordinance or of the rules made thereunder, he shall be punishable with imprisonment for a period which may extend to one year, or with fine, or with both.

CHAPTER V

MISCELLANEOUS

36. *Protection of action taken in good faith.*—No suit, prosecution or other legal proceeding shall lie against the Controller or any Inspector under this Ordinance in respect of anything which is in good faith done or intended to be done in pursuance of this Ordinance or the rules made thereunder.

37. *Controller and Inspector to be Public servants.*—The Controller and the Inspectors appointed under this Ordinance shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

38. *Cognizance of offences, etc.*—(1) No court shall take cognizance of an offence punishable under this Ordinance except upon complaint in writing made by the Controller or any officer authorised in this behalf by the Controller by general or special order.

(2) No court inferior to that of a magistrate of the first class shall try any offence punishable under this Ordinance.

39. *Stamped weight, etc., to be presumed to be correct.*—A weight or measure or weighing or measuring instrument duly stamped under the provisions of this Ordinance and the rules made thereunder shall be presumed to be correct until its inaccuracy is proved, if it is produced in any court by any Inspector having charge thereof or by any person acting under the general or special authority of the Controller.

40. *Offences by companies.*—(1) If the person committing an offence under this Ordinance is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this subsection shall render any such person liable to punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in subsection (1), where an offence under this Ordinance has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm, means a partner in the firm.

41. *Delegation of powers.*—The Government may, by notification in the Gazette, direct that any power exercisable by them under this Ordinance or the rules made thereunder shall, in relation to such matters and subject to such conditions, as may be specified in the direction, be exercisable also by such officer or authority subordinate to the Government as may be specified in the notification.

42. *Limits of error to be tolerated in weights and measures.*—Subject to any rules that may be made under the Standards of Weights and Measures Act, 1956, in this behalf, the Government may prescribe the limits of error which may be tolerated—

(a) in working standards referred to in section 3;

(b) in secondary standards referred to in section 4;

(c) in commercial weights and measures or in selling articles by weight or measure generally or as regards any trade or class of trades; and

(d) in weighing and measuring instruments.

43. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules to carry out the purposes of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the material of which and the designs and specifications according to which working standards may be made, the agency by which such standards may be prepared, the person by whom or the authority by which and the manner in which such standards may be stamped and authenticated; the places at which and the custody and manner in which such standards may be kept;

(b) the procedure for the verification or reverification and marking of working standards, the persons by whom, the places at which and the intervals at which they may be marked;

(c) the material of which and the designs and specifications according to which secondary standards may be made, the places at which and the custody and manner in which such standards may be kept;

(d) the procedure for the verification or reverification and marking of secondary standards and the manner in which they may be marked;

(e) the number of weighing and measuring instruments to be kept, the manner in which they may be verified and stamped and necessary particulars regarding the same;

(f) the manner in which commercial weights and measures may be marked by manufacturers;

(g) the form and manner in which, and the conditions subject to which licences may be granted to persons for the manufacture, repair or sale of commercial weights and measures and weighing and measuring instruments;

(h) the qualifications, functions and duties generally of Inspectors under this Ordinance;

(i) verification and stamping of weights and measures and weighing and measuring instruments and the period within which they are to be reverified;

(j) inspection of weights and measures and weighing and measuring instruments used in transactions for trade or commerce;

(k) the seizure, detention and disposal of weights and measures which are not authorised by this Ordinance;

(l) the books, accounts and records relating to weights and measures and weighing and measuring instruments to be maintained and the manner in which they may be maintained or produced ;

(m) the limits of error which may be tolerated in secondary or working standards ;

(n) the limits of error which may be tolerated in weights and measures and weighing and measuring instruments used or intended to be used in transactions for trade or commerce ;

(o) the limits of error which may be tolerated in selling articles by weights and measures generally or as regards any trade or class of trades ;

(p) the form and manner in which appeals may be preferred against decisions of the Controller and the Inspectors and the procedure for hearing appeals ;

(q) the fees which may be charged for the grant of licences under section 13 and for verification, reverification, adjustment and stamping of weights and measures and weighing and measuring instruments and the levy and collection of the same ;

(r) the material, form and specification and manufacture and sale of commercial weights and measures and weighing and measuring instruments; and

(s) any other matter which has to be, or may be, prescribed.

(3) In making any rule under this section the Government may provide that a breach thereof shall be punishable with fine which may extend to five hundred rupees.

(4) The power to make rules under this section shall be subject to the condition of previous publication in the Gazette.

(5) All rules made under this section shall, as soon as may be after they are made, be laid before the Legislative Assembly for a period of not less than seven days and shall be subject to such modifications, by way of repeal or amendment, as the Legislative Assembly may make during the session in which they are so laid or the session immediately following.

44. *Repeal.*—The Madras Weights and Measures Act, 1948 (Act XXII of 1948), as in force in the Malabar District referred to in subsection (2) of section 5 of the States Reorganisation Act 1956 (Central Act 37 of 1956), the Cochin Weights and Measures Act, LXIII of 1112, and the Travancore Weights and Measures Act, 1085 (Act VI of 1085), are hereby repealed.

B. RAMAKRISHNA RAO,
Governor.